Al Rajhi Banking & Investment Corp (M) Bhd v Hapsah Food Industries Sdn Bhd & Ors and another action

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NOS D-22NCC-345 OF 2010 AND D-22NCC-471 OF 2010
MOHAMAD ARIFF J
31 JANUARY 2011

Banking — Banks and banking business — Banking facilities — Trade financing facility — Failure to pay 'sale price' under Trade Commodity Financing-i disbursements and Structured Commodity Financing-i facility — Provision of trade financing for import of rubber products from Indonesia — Breach of obligation by borrower to assign proceeds of sale in favour of bank — Whether a major breach by borrower — Whether borrower entitled to demand for additional facility to finance new contracts — Whether borrower could rely on promissory estoppel and doctrine of forbearance

Civil Procedure — Costs — Unmeritorious claim — Higher costs awarded — Strong signal to be sent that unmeritorious claims will not be tolerated

Equity — Estoppel — Promissory estoppel — He who comes to equity must come with clean hands — Untruthful misrepresentation made by promise — Promisee's conduct not meriting any sympathy — Whether promisee could invoke promissory estoppel against promisor

Civil Suit No D-22NCC-345 of 2010 (where Al Rajhi Banking and Investment Corp (M) Bhd was the plaintiff) and Civil Suit No D-22NCC-471 of 2010 (where Hapsah Food Industries Sdn Bhd ('Hapsah') was the plaintiff) were heard as a consolidated action. The dispute centered on the failure on the part of Hapsah to pay the 'sale price' of two Trade Commodity Financing-i ('TCF-i') disbursements and the failure secondly, to pay the amount outstanding in respect of a Structured Commodity Financing-i ('SCF-i') facility. The essential basis of the financing was to provide trade financing to Hapsah to import rubber products from Indonesian suppliers for onsale to Mardec Processing Sdn Bhd, which would then pay for the products supplied to it under purchase orders issued by it to Hapsah. Letters of credit ('LC') were issued to ensure payments to these Indonesian suppliers. It was the obligation of Hapsah to ensure payment of the LC amount and the bank's profit portion. There were altogether six LCs issued, all being eight LCs, and seven TCFs. To ensure payment, the bank required an assignment of the proceeds of the contract payable by Mardec, out of which 10% would be deducted to be

emplaced in an escrow account or sinking fund. The evidence disclosed that Hapsah was supplying to third party unauthorised customers, namely Lee Rubber and Felda Rubber, for which there did not exist any assignment of contract proceeds. This was done apparently because to have continued to sell to Mardec would have resulted in losses to the first defendant because of Mardec's stricter requirement on DRC or Dry Rubber Content. Hapsah then requested for an additional facility to finance its new contracts with Lee Rubber and Felda Rubber, at the time when it was already committing a major breach of its agreement with the plaintiff. Hapsah attempted to build a case on a promissory estoppel and doctrine of forbearance, namely it was apparently represented to Hapsah that if Hapsah could obtain the notices of assignments, the plaintiff would not insist on its strict legal rights and hold the facilities in abeyance.

Held, dismissing the plaintiff's claim in Suit No D-22NCC-471 of 2010 with costs and allowing the plaintiff's claim in Suit No D-22NCC-345 of 2010 with costs:

(1) Hapsah had blatantly disregarded its obligations not to supply to unauthorised third parties which had the effect of jeopardising the security for payment provided to the plaintiff in the form of the assignment of contract proceeds (see para 18).

(2) The plaintiff was willing to salvage the situation by requiring Hapsah to provide notices of assignments from Lee Rubber and Felda Rubber, and a confirmation from Felda Rubber that the institution still owed Hapsah payments for 30 containers as represented to the plaintiff by Encik Dahlan (DW1) of Hapsah. However, the notice of assignment by Felda Rubber was not signed by an authorised officer, and no payments were in fact made by Felda to the plaintiff. It was also confirmed by the evidence that Hapsah had supplied only six containers to Felda, not 30 containers. There was also no notice of assignment from Lee Rubber at all. Thus, there was legitimate cause for the plaintiff to call a default and to terminate the facilities given to Hapsah (see paras 24–26).

(3) Hapsah had tried to build up an improbable case based on equitable grounds of promissory estoppels. However, it is trite that he who comes to equity must come with clean hands. The court could not on the evidence find that the conduct of Hapsah provided an affirmation of this. Hapsah had simply not done its part to comply with the requirements of the plaintiff. The evidence disclosed a major case of untruthful misrepresentation on the part of Hapsah. Hapsah's conduct did not merit any sympathy. The evidence showed there was never any intention on the part of Hapsah to comply with the conditions required by the plaintiff to assist it (see paras 27–28 & 31).

(4) Higher costs was to be awarded against Hapsah in view of the

unmeritorious claim instituted for the alleged loss of RM55,000,264. A strong signal must be sent that an unmeritorious claim such as this cannot be tolerated. As such, costs of RM50,000 was awarded in Suit No D-22NCC-471 of 2010 (see para 32).

[Bahasa Malaysia summary

Guaman Sivil No D-22NCC-345 Tahun 2010 (di mana Al Rajhi Banking and Investment Corp (M) Bhd merupakan plaintif) Guaman Sivil No D-22NCC-471-2010 (di mana Hapsah Food Industries Sdn Bhd ('Hapsah') merupakan plaintif) dibicarakan sebagai tindakan bersama. Pertikaian berkisar atas kegagalan pada pihak Hapsah membayar 'sale price' dua pembayaran Trade Commodity Financing-i ('TCF-i') dan kegagalan kedua, membayar jumlah tertunggak bagi kemudahan Structured Commodity Financing-i ('SCF-i'). Asas utama kewangan adalah untuk memperuntukkan kewangan bagi Hapsah untuk mengimport barangan getah dari pembekal Indonesia untuk jualan seterusnya kepada Mardec Processing Sdn Bhd, yang kemudiannya akan membayar bagi barangan yang dibekalkan kepadanya di bawah perintah belian yang dikeluarkan kepadanya oleh Hapsah. Surat kredit ('SK') dikeluarkan untuk memastikan bayaran kepada pembekal Indonesia. Adalah kewajipan Hapsah untuk memastikan bayaran jumlah SK dan bahagian keuntungan bank. Terdapat enam SK yang dikeluarkan secara keseluruhannya, kesemuanya lapan LC dan tujuh TCF. Untuk memastikan pembayaran, bank memerlukan penyerahan hak hasil kontrak yang perlu dibayar oleh Mardec, yang dari jumlahnya 10% akan ditolak untuk diletakkan di dalam akaun eskrow atau dana pembayaran hutang (*sinking fund*). Keterangan mendedahkan bahawa Hapsah membekalkan kepada pelanggan pihak ketiga yang tidak diberi kuasa, iaitu Lee Rubber dan Felda Rubber, yang tidak wujud apa-apa kontrak penyerahan hak hasil terhadapnya. Ini dilakukan kononnya kerana jualan berterusan kepada Mardec akan menyebabkan kerugian kepada defendan pertama kerana keperluan ketat Mardec atas DRC atau 'Dry Rubber Content'. Hapsah kemudian meminta kemudahan tambahan untuk membiayai kontrak barunya dengan Lee Rubber dan Felda Rubber, pada masa ia telah pun melakukan kemungkiran besar perjanjiannya dengan plaintif. Hapsah mencuba untuk membentuk kesnya atas *promissory estoppel* dan *doctrine of forbearance*, di mana ia merepresentasi kepada Hapsah bahawa jika Hapsah boleh mendapatkan notis penyerahan hak, plaintif tidak akan mendesak atas hak undang-undang yang ketat dan memutuskan kemudahan yang tidak berkuat kuasa.

Diputuskan, menolak tuntutan plaintif dalam Guaman No D-22NCC-471 Tahun 2010 dengan kos dan membenarkan tuntutan plaintif di dalam Guaman No D-22NCC-345 Tahun 2010 dengan kos:

(1) Hapsah telah secara jelas tidak mengendahkan kewajipannya untuk tidak membekalkan kepada pihak ketiga yang tidak diberi kuasa yang

mempunyai kesan memudaratkan jaminan untuk pembayaran yang diperuntukkan kepada plaintif dalam bentuk penyerahan hak hasil kontrak (lihat perenggan 18).

(2) Plaintif sanggup menyelamatkan keadaan dengan meminta Hapsah untuk memperuntukkan notis penyerahan hak daripada Lee Rubber dan Felda Rubber, dan satu pengesahan daripada Felda Rubber bahawa institusi tersebut masih berhutang kepada Hapsah bayaran untuk 30 kontena seperti yang dinyatakan kepada plaintif oleh Encik Dahlan dari Hapsah. Walau bagaimanapun, notis penyerahan hak oleh Felda Rubber tidak ditandatangani oleh pegawai berkuasa, dan tidak ada bayaran yang sebenarnya dibayar oleh Felda kepada plaintif. Juga disahkan oleh keterangan bahawa Hapsah telah membekalkan enam kontena kepada Felda, bukan 30 kontena. Juga tidak ada notis penyerahan hak langsung daripada Lee Rubber. Oleh demikian, ada sebab yang sah untuk plaintif menyatakan terdapat kemungkiran dan untuk membatalkan kemudahan yang diberikan kepada Hapsah (lihat perenggan 24–26).

(3) Hapsah telah mencuba untuk mengukuhkan kes yang tidak munasabah berdasarkan alasan ekuiti *promissory estoppel*. Walau bagaimanapun, adalah jelas bahawa seseorang yang ingin bergantung pada ekuiti perlu bersikap jujur. Mahkamah, atas keterangan, tidak mendapati bahawa tindakan Hapsah memberikan pengesahan terhadapnya. Hapsah telah tidak menjalankan bahagiannya untuk mematuhi keperluan plaintif. Keterangan mendedahkan kes utama mengenai representasi salah yang tidak benar oleh Hapsah. Tindakan Hapsah tidak mewajarkan apa-apa simpati. Keterangan menunjukkan bahawa tidak ada niat oleh Hapsah untuk mematuhi syarat-syarat yang diperlukan oleh plaintif untuk membantunya (lihat perenggan 27–28 & 31).

(4) Kos yang lebih tinggi diawardkan kepada Hapsah dengan mempertimbangkan tuntutan yang tidak bermerit yang dimulakan untuk kerugian yang didakwa sebanyak RM55,000,264. Signal yang diberikan bahawa sesuatu tuntutan yang tidak bermerit seperti ini tidak boleh dipertahankan. Dengan itu, kos sebanyak RM50,000 diberikan bagi Guaman No D-22NCC-471 Tahun 2010 (lihat perenggan 32).]

Notes

For a case on banking facilities, see 1(2), *Mallal's Digest* (4th Ed, 2010 Reissue) para 2193.

For a case on promissory estoppel, see 6 *Mallal's Digest* (4th Ed, 2010 Reissue) para 2862.

For cases on costs in general, see 2(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 2046–2450.

Cases referred to

Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] 3 MLJ 331, FC (refd)

Sim Siok Eng v Government of Malaysia [1978] 1 MLJ 15, FC (distd)

United States in Dickerson v Colgrove 100 US 578 (1880) (refd)

Mohd Zaid Daud (Edham with him) (Zulpadli & Edham) for the plaintiff.
Azwan Ibrahim (Amir Ismail with him) (Azwan & Nadzim) for the defendants.

Mohamad Ariff J:

[1] Civil Suit No D-22NCC-345 of 2010 (where Al Rajhi Banking & Investment Corp (Malaysia) Bhd is the plaintiff) and Civil Suit No D-22NCC-471 of 2010 (where Hapsah Food Industries Sdn Bhd is the plaintiff) have been heard as a consolidated action.

[2] In Suit D-22NCC-345 of 2010, the second and third defendants are being sued in their capacity as guarantors.

[3] I am allowing the claim by the plaintiff bank in D-22NCC-345 of 2010 as prayed in its writ of summons and statement of claim, prayers (i) and (ii) for the adjusted sum of RM4,888,701.43 for the TCF-i facility and RM84,839.17 for the SCF-i facility with costs of RM15,000 to be paid by the defendants to the plaintiff within one month from the date of this order, with judgment to be entered accordingly.

[4] As for Civil Suit No D-22NCC-471 of 2010, I am dismissing the plaintiff's (Hapsah Food's) claim with costs of RM50,000 to be paid by the defendant to the plaintiff within one month from the date of this order.

[5] I will now proceed to first provide my grounds in relation to Suit No D-22NCC-345 of 2010.

[6] This dispute essentially centres on the failure on the part of the first defendant company, Hapsah Food Industries Sdn Bhd ('Hapsah'), to pay the 'sale price' of two TCF-i disbursements (identified as TCF CB012 and TCF CB020), and the failure secondly, to pay the amount outstanding in respect of an SCF-i facility. The final amounts for these two facilities due and owing are:

TCF-i	RM4,888,701.43
SCF-i	RM 84,839.17

[7] The TCF-i and SCF-i facilities are Islamic financing facilities described as

a Trade Commodity Financing-i and Structured Commodity Financing-i. The former is granted for purposes of trade financing as a back-to back financing with a letter of credit facility granted. The latter facility is granted for purposes of working capital requirements. The TCF-i facility is based on *murabaha* principles while the SCF works on *al bai' bithaman ajil* principles.

[8] I feel an understanding of the basic mechanics of the Islamic facilities granted is crucial in this case to appreciate why, and in what circumstances, the first defendant came to be in default.

[9] It is customary in common law cases to appeal to equitable principles to achieve a legal conclusion that can be regarded as just and proper between the parties. I have to observe in this connection that these equitable principles should be accorded an even more heightened presence since these are Islamic faicilities, where considerations of aqad and piety in commercial relations should be regarded as primary considerations.

[10] I have taken note and paid particular attention to the mechanics of the trade financing facility, in particular. It is evident that the essential basis of the financing is to provide trade financing to the first defendant to import rubber products from Indonesian suppliers through two companies identified as Mirfit Manpower Sdn Bhd and Grand Reach Sdn Bhd. The rubber products imported would then be onsold to Mardec Processing Sdn Bhd, which would then pay for the products supplied to it under purchase orders issued by it to Hapsah. Letters of credit are issued to ensure payments to these Indonesian suppliers. The LC facilities are granted by the plaintiff bank and these would serve to pay Mirfit and Grand Reach for the shipments. It is then the obligation of the first defendant to ensure payment of the LC amount and the bank's profit portion under express terms and conditions of the allied TCF-i facility, which in effect provides the specific working capital for payment of the LC amounts.

[11] Evidence has been led during the trial that these LCs issued could be 'sight' or 'usance' LCs, but the TCF-i obligation to reimburse has a contractually determined maximum tenor of 45 days.

[12] All the LCs issued in this case were sight LCs, namely the exporters were guaranteed and paid immediately upon receipt of shipment. Depending on the request made by Hapsah and approved by the banks, reimbursement could be for the maximum tenor of 45 days or earlier.

[13] On the facts of this case, there were altogether six LCs issued, all being sight LCs, and seven TCFs. Two were for a 45 day tenor, the rest for 30 days. (There are seven TCFs because under the first LC there were two separate shipments).

[14] In the course of the trial much was said by the defendants on this issue of tenor, inasmuch as stating and insinuating that the first defendant had no choice and was forced to accept the shorter tenor of 30 day, and because this was so, loss was caused to the first defendant.

[15] It is ironic that the default on the facts here is not in relation to payment for the shorter tenor, but for the maximum tenor of 45 days.

[16] With due respect, this line of attack by the defendants is a red herring. I can only conclude after hearing the evidence of the witnesses of the defendants in this connection, in particular the evidence of DW1 and DW2, either they have failed completely to understand the mechanics of the facilities accorded to the first defendant, or they are simply untruthful witnesses. I prefer to be charitable and opt for the former category.

[17] Built into the mechanics of payment are several security arrangements. These facilities are structured facilities in this sense. True enough, the structure is a complicated one because it involves Islamic financing which requires the interposition of a supply and exchange of commodities nominally done, but failure to comprehend the exact nature of the facilities cannot be a reason not to comply with essential obligations on the part of the first defendant.

[18] I find on the evidence and the law, the first defendant has blatantly disregarded its obligations not to supply to unauthorised third parties which have the effect of jeopardising the security for payment provided to the plaintiff in the form of the assignment of contract proceeds.

[19] To ensure payment, the bank has required an assignment of the proceeds of the contract payable by Mardec, out of which 10% would be deducted to be emplaced in an escrow account or sinking fund. This is to be done after deducting the repayment of the financing amount. Any balance remaining will then be credited into the first defendant's operating account. This was done as regards the first repayment amount that was credited into the escrow account. Thereafter the proceeds proved insufficient to maintain the sinking fund obligation and therefore no further amounts remained to transfer to the first defendant's operating account.

[20] The evidence disclosed, and this is admitted by the first defendant, the first defendant was supplying to third party unauthorised customers, namely Lee Rubber and Felda Rubber, for which there did not exist any assignment of contract proceeds.

[21] This was done apparently because to have continued to sell to Mardec

would have resulted in losses to the first defendant because of Mardec's stricter requirement on DRC or dry rubber content.

[22] The first defendant then requested for an additional facility to finance its new contracts with Lee Rubber and Felda Rubber, at the time when it was already committing a major breach of its agreement with the plaintiff.

[23] The effect of the sale to unauthorised third parties is well expressed in the testimony of PW2, (Punitharaja) who said:

> This assignment is important because it allows the Plaintiff to have control over the cashflow of the 1st Defendant. Basically, any proceeds received will first be utilized to settle any outstanding amount with the Plaintiff whereby any proceeds received are immediately credited into the non-checking proceeds account ie escrow account to which the Plaintiff has a charge over it …
>
> Therefore, by selling the goods ie the rubbers imported, to other parties besides Mardec Processing, the 1st Defendant is actually in default of these clauses, since the 1st Defendant no longer provides a continuing security to the Plaintiff …
>
> The Plaintiff could only enforce this assignment of proceeds against Mardec Processing, and since the 1st Defendant is not selling any goods to Mardec Processing … it renders the security ineffective since the Plaintiff technically has no proceeds to recover from Mardec Processing.

[24] It is clear on the evidence that the plaintiff was willing to salvage the situation by requiring the first defendant to provide notices of assignments from Lee Rubber and Felda Rubber, and a confirmation from Felda Rubber that the institution still owed the first defendant payments for 30 containers as represented to the plaintiff by Encik Dahlan (DW1) of the first defendant.

[25] Although Encik Dahlan attempted to argue he had obtained and sent the original notice of assignment from Felda to the office of the plaintiff's solicitors, his version of the facts appears to me improbable, and indeed was flatly contradicted by Encik Yahya Zakaria (PW7), the solicitor who prepared the draft notice of assignment. I have no reason to doubt Encik Zakaria's version of the facts as against the version by Encik Dahlan, who has shown to be an evasive and untruthful witness. In any event, the evidence has now disclosed the notice of assignment by Felda Rubber was not signed by an authorised officer, and no payments were in fact made by Felda to the plaintiff. It was also confirmed by the evidence that the first defendant had supplied only six containers to Felda, not 30 containers. There was also no notice of assignment from Lee Rubber at all.

[26] Thus on the evidence and the facts, there was legitimate cause for the plaintiff to call a default and to terminate the facilities given to the first defendant.

[27] The case pleaded by the defendant is to this extent highly improbable and has no plausible evidential basis. In short, the first defendant attempts to build a case on a promissory estoppel and doctrine of forbearance, namely it was apparently clearly represented to the first defendant that if the first defendant could obtain the notices of assignments, the plaintiff would not insist on its strict legal rights and hold the facilities in abeyance. These assurances were apparently made in the meetings in November and December 2009. Contrary to the first defendant's claim, the evidence disclosed a major case of untruthful misrepresentation on the part of the first defendant. There were no 30 containers supplied to Felda Rubber and the amount owing from Felda Rubber to the first defendant was only in the region of RM800,000.

[28] The first defendant has tried to build up an improbable case based on equitable grounds of promissory estoppel and has relied on, inter alia, the cases of *Sim Siok Eng v Government of Malaysia* [1978] 1 MLJ 15 and the leading case of *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331, but it is trite that he who comes to equity must come with clean hands. I am afraid I cannot on the evidence find that the conduct of the first defendant, and its relevant officers, provide an affirmation of this. As recognised in *Boustead Trading* itself (with its reference to the US Supreme Court decision in *Dickerson v Colgrove* (1880)), this equitable remedy is always applied so as to promote the ends of justice. The ends of justice will not be served if this court were to accede to the ground advanced by the first defendant. I quote the relevant passage from *Boustead Trading*:

> The width of the doctrine has been summed up by Lord Denning in the *Amalgamated Investment* case ([1982] QB 84 at p 122; [1981] 3 All ER 577 at p 584; [1981] 3 WLR 565 at p 575) as follows:
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> > The doctrine of estoppel is one of the most flexible and useful in the armoury of the law. But it has become overloaded with cases. That is why I have not gone through them all in this judgment. It has evolved during the last 150 years in a sequence of separate developments: proprietary estoppel, estoppel by representation of fact, estoppel by acquiescence, and promissory estoppel. At the same time it has been sought to be limited by a series of maxims: estoppel is only a rule of evidence, estoppel cannot give rise to a cause of action, estoppel cannot do away with the need for consideration, and so forth. All these can now be seen to merge into one general principle shorn of limitations. When the parties to a transaction proceed on the basis of an underlying assumption — either of fact or of law — whether due to misrepresentation or mistake makes no difference — on which they have conducted the dealings between them — neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands. (Emphasis added.)
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> In *Lim Teng Huan v Ang Swee Chuan* [1992] 1 WLR 113, an appeal from Brunei Darussalam, the Privy Council said that the decision in the *Taylor Fashions* case:
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> > ... showed that, in order to found a proprietary estoppel, it is not essential that

> the representor should have been guilty of unconscionable conduct in permitting the representee to assume that he could act as he did: it is enough if, in all the circumstances, it is unconscionable for the representor to go back on the assumption which he permitted the representee to make (per Lord Browne-Wilkinson at p 117).

The essential nature of the doctrine does not appear to be any different in American equity jurisprudence. This is reflected by the following passage in the opinion of the Supreme Court of the *United States in Dickerson v Colgrove* (1880) 100 US 578 at p 580 (25 L Ed 618) delivered by Swayne J:

> The estoppel here relied upon is known as an equitable estoppel, or estoppel in pais. The law upon the subject is well settled. The vital principle is, that he who, by his language or conduct, leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden. It involves fraud and falsehood, and the law abhors both. This remedy is always so applied as to promote the ends of justice (per Gopal Sri Ram J) (as His Lordship then was) at pp 345–346).

[29] The case of *Sim Siok Eng v Government of Malaysia*, is distinguishable on the facts, and furthermore this was a building contract case on the doctrine of forbearance. The appellant in that cased had a judgment against him on two suits for breach of contract. The appellant had undertaken to build some buildings for the respondent but did not complete on the completion date. There had been an arrangement for the respondent to supply certain building materials to the appellant, as he had found difficulty in getting them. Subsequently the supply was stopped but no adequate notice was given to the appellant. The Federal Court held the evidence indicated the appellant was clearly induced to believe that certain essential materials would be supplied to him. The respondent promised to supply the materials to appellant whenever the latter asked for them and a considerable amount of materials were so supplied. Relying on the promise or assurance the appellant had altered his position and his responsibilities to supply those materials had been suspended or kept in abeyance. For the respondent to reimpose the contractual provision adequate notice should be given and the notice given was not reasonable. The respondent was therefore in breach in terminating the contract.

[30] The same degree of certainty in the evidence is simply not present on the facts of this instant case. Hapsah has simply not done its part to comply with the requirements of the plaintiff. As I have indicated earlier and contrary to the first defendant's claim, the evidence disclosed a major case of untruthful misrepresentation on the part of the first defendant.

[31] Upon a careful evaluation of the evidence, I have to observe that the conduct of the first defendant does not merit any sympathy. I fully agree with

A the plaintiff's counsel's conclusion that the evidence shows there was never any intention on the part of the first defendant to comply with the conditions required by the plaintiff to assist it.

B **[32]** Hence, for the reasons adumbrated above, I am dismissing the claim by Hapsah in Suit No D-22NCC-471 of 2010 and entering judgment for the plaintiff bank against the defendants in Suit No D-22NCC-345 of 2010 as earlier referred to. As for costs, counsel for Al-Rajhi pressed for higher costs to be awarded against Hapsah in D-22NCC-471 of 2010 in view of the unmeritorious claim instituted for the alleged loss of RM55,000,264. Counsel
C urged upon this court that a strong signal must be sent that an unmeritorious claim such as this cannot be tolerated. Given the conduct of the defendants, I have no hesitation to agree with the plaintiff bank's counsel. I am therefore awarding costs of RM50,000 in Suit No D-22NCC-471 of 2010.

D *Claim by plaintiff in Suit No D-22NCC-471 of 2010 dismissed with costs and claim by plaintiff in Suit No D-22NCC-345 of 2010 allowed with costs.*

Reported by Kanesh Sundrum

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